Supreme Court, U.S.
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No. 99-954

In The

Supreme Court of the United States

WALTER GEORGE,

Petitioner,

v.

NATIONAL ASSOCIATION OF LETTER CARRIERS, AND ITS LOCAL BRANCH # 1037,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITIONER'S REPLY BRIEF

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REPLY

In its Brief in Opposition, the National Association of Letter Carriers ("NALC") mischaracterizes the evidence in several significant ways. While the NALC would be free to put its own "spin" on the evidence if this case were in front of a jury, the summary judgment record undeniably supports the Petitioner's version of the events in every material way. First, the union applied economic pressure against a neutral employer (Brookfield Uniforms) that was sufficiently compelling and restraining to constitute "threats," "coercion," and "restraint." (R. 740-742, 771, 776-778). There is no other way to interpret the Brookfield Area Manager's statements that the union tactics put Brookfield "between a rock and a hard place," that a union boycott would "basically put us out of business," and that Brookfield's consequent firing of Mr. George was something "we've just got to do." (R. 740-742, 776-777). Second, there is abundant evidence, detailed in the Petition for Certiorari, that the union's coercive secondary tactics were in pursuit of a statutorily proscribed objective – forcing Brookfield to cease doing business with Mr. George. (R. 740-742, 771, 776-778). Again, there is no other way to interpret Hampton's explanation of why the union intended to boycott Brookfield: "The labor union said, 'if you don't get rid of him, we are going to boycott Brookfield Uniforms.' " (R. 771). Even the President of the Amarillo Local conceded in his deposition that the union's objective was to force Brookfield to fire George. (R. 756).

Despite this clear evidentiary foundation for George's § 8(b)(4)(ii)(B) cause of action, the NALC pieces together isolated snippets from the summary judgment record in an effort to create the illusion that Brookfield (and George) were targeted by the union simply because of "inconsistencies" in George's employment. (As if that would somehow justify coercing a secondary employer to fire one of its employees.) This strategy is little more than a pitiful effort to imply that George was somehow doing something inappropriate. But there was no inconsistency in George's post-retirement employment. He sold Brookfield Uniforms in an entirely

different region of the state than that in which he performed inspections for the Postal Service. (R. 720-732). There is no evidence – and there could be none – that he was inspecting the very persons he was selling to. Both Brookfield and the Postal Service were aware of George's employment arrangements. (R. 732, 771). Indeed, the evidence suggests that the only reason he was hired for either job is because of his reputation as an honest, hardworking man. (R. 720-729). What else would explain the Postal Service's decision to hire him as an independent contractor to inspect postal stations? And if George were not known for being honest and fair during his thirteen years as a supervisor in Midland, why would Brookfield decide (following George's retirement from the Postal Service) that he was the best person to sell uniforms to the persons that he had formerly supervised? In short, the NALC's attempt to paper over shabby union behavior by casting aspersions toward Mr. George (and suggesting in the Fifth Circuit that he was leading some kind of a double life) is offensive. What the summary judgment evidence shows, and what a jury will surely find, is that this is a case about an honest hardworking man who, simply because he did *his* job, was illegally targeted for economic retaliation by lazy and slothful letter carriers who, as George found during his inspection of Amarillo's Jordan Station, were not effectively doing *their* jobs.

If the union was upset about the Postal Service's use of George as an inspector, for any reason, including George's employment with Brookfield in another region of the state, it could have complained to the Postal Service, the *primary employer* of the letter carriers. Activity directed toward the Postal Service rather than Brookfield would constitute primary activity not prohibited by § 8(b)(4). Or, the union could have complained about George's two jobs to Brookfield, so long as it avoided *coercing* Brookfield to stop doing business with Mr. George. If Brookfield was troubled by George's status as a part-time Postal Service inspector, it could have made its own independent choice to terminate George. But George's contract work for the Postal Service did not interfere with his Brookfield work, (R. 732), and Phil Hampton of

Brookfield informed George that he had no problem with George's arrangement other than that the union "raised hell about it." (R. 771). And, during the same conversation, Hampton explained George's firing to be the result of the union's threat to boycott Brookfield Uniforms. (R. 771). That explanation was consistent with the explanation Hampton had earlier left on George's answering machine: " . . . in order to prevent a boycott of Brookfield Uniforms [that would] basically put us out of business, we are going to have to terminate our relationship with you. . . . " (R. 740-742). In short, the evidence demonstrates precisely what § 8(b)(4)(ii)(B) proscribes – coercive economic pressure applied to a secondary employer in an effort to force that employer to cease doing business with another.

With respect to the NALC's legal arguments, it wholly embraces, as it must, the Fifth Circuit's arbitrary *per se* view that secondary union activity cannot possibly violate § 8(b)(4)(ii)(B) in the absence of picketing. Its position is not only directly contrary to the language of § 8(b)(4)(ii), but the overly generous view of the First Amendment upon which its position is founded would create a sizable loophole in § 8(b)(4)(ii), a loophole that would permit labor unions to threaten neutral employers with economic destruction in an effort to achieve statutorily proscribed objectives, such as forcing the neutral employer to stop doing business with another, so long as the union's threat does not include picketing. The arbitrariness of the NALC's position (and the Fifth Circuit's) is evident in the fact that Brookfield Uniforms was economically brought to its knees and forced to do the union's bidding without the union having to picket. (R. 740-742, 771, 776-778). Indeed, given the particular facts of this case, picketing would not even make sense. Coercing Brookfield to fire George in no way depended on getting its message to the general consuming public. And its "message" (Postal Service inspector uncovers slothful letter carriers) is surely one that the union had no desire to take to the streets. That explains the union's tactical choice to bypass picketing and go straight for the secondary's economic throat by directly threatening Hampton that letter carriers would stop buying Brookfield's

only product (postal uniforms) if he didn't fire George. (R. 740-742, 756, 771, 776-778). As in *Safeco*, such a tactic poses a realistic threat of financial ruin to a one-product secondary like Brookfield Uniforms. *See* 447 U.S. at 614-15. And, whether viewed in light of the express language of § 8(b)(4)(ii)(B), or in light of the First Amendment, it is utterly irrelevant whether the Union's financially ruinous secondary boycott of Brookfield was to be implemented by letter writing, by telephone, by e-mail, or by placards on a stick.[1]

A conspiracy to restrain trade is always going to involve talking or writing. Similarly, the solicitation of union brothers to engage in concerted action in an effort to unlawfully coerce a secondary employer to cease doing business with another – in direct contravention of § 8(b)(4)(ii)(B) – is always going to involve oral or written communication. And such communication, when it amounts to an economically restraining threat motivated by a statutorily prohibited objective (forcing a secondary to stop doing business with another), is hardly imbued with substantial First Amendment significance. Section 8(b)(4)(ii), as construed by this Court in *Tree Fruits, Safeco,* and *DeBartolo,* permits unions to engage in a wide array of communicative activities, including picketing, until the communication becomes an economically restraining coercive threat; even then, the coercion is not proscribed unless aimed at a secondary employer and accompanied by an illegal objective. *See* Petition for Certiorari, at 6-11, 13-17. Thus, that the union's ill-motivated and economically coercive boycott of Brookfield was to be implemented by writing letters is simply beside the point. Additionally, Brookfield's

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[1] Having consistently argued that there must be picketing in order to violate § 8(b)(4), the NALC now adjusts its argument, in apparent response to the cases cited in the Petition for Certiorari, to one that construes § 8(b)(4) to prohibit only picketing or other "conduct." Of course, even if a coercive threat designed to achieve an illegal objective somehow does not constitute "conduct," what the union threatened to do in this case – and would have done had Brookfield not caved in and fired George – was to engage in a concerted refusal to deal with Brookfield. In every way, shape, and form, that is "conduct."

Hampton, a former union man himself, (R. 773, 777, 839), precisely understood the nature and scope of the threat. Contrary to the NALC's argument, Hampton interpreted the Amarillo Local's actions as a formal vote to boycott Brookfield, including a threat to instigate a national boycott. (R. 776-778, 771). Thus, there is evidence that contradicts the NALC's position that its local union planned only to write letters informing the Midland area letter carriers that George was doing inspections for the Postal Service. Because the Midland letter carriers knew and respected George, it is unlikely that Hampton would have seen such a limited tactic as likely to "put us out of business." (R. 740-742). Instead, Hampton saw the threat exactly the way the union wanted him to – as a vote to boycott Brookfield, as a decision that the Amarillo letter carriers would stop buying from Brookfield, as a threat to ask other letter carriers to stop buying from Brookfield, and as a threat to take steps that Hampton knew could spread the boycott nationwide. (R. 740-742, 771, 776-778).

Finally, George has never "conceded" that his Texas cause of action for tortious interference runs precisely parallel to his § 8(b)(4)(ii)(B) cause of action. Petitioners merely acknowledged in the Fifth Circuit that if the union tactics involved herein are, in the final analysis, "protected" by the First Amendment, that those tactics could not be regarded as tortious. Petitioners have never conceded that the state tort claim must fail simply because the union tactics fall outside of § 8(b)(4)(ii)(B)'s prohibition, *no matter what the reason*. The significance of *why* the § 8(b)(4)(ii)(B) claim fails, if indeed it does, is explained in the Petition for Certiorari, at 18-19.

Respectfully submitted,

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